IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL WRIT NO.1033 OF 2007

DATE OF DECISION: DECEMBER 14, 2007

Teja Singh

.....Petitioner

VERSUS

State of Haryana and others.

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. G. S. Sandhu, Advocate,
for the petitioner.

Ms. Reeta Kohli, Addl.A.G., Punjab,
for the State.

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RANJIT SINGH, J. (ORAL)

Teja Singh, a convict who is undergoing life imprisonment, having been convicted for offences under Sections 302, 307, 436, 427, 148, 149 IPC and 3(4) of Terrorists Disruptive Activities (Prevention) Act, has filed this writ petition with the grievance that his continued detention even on completion of sentence of over 14 years actual is rendered illegal and further that his prayer for pre-mature release has been wrongly rejected by the Government. The petitioner was tried for the above noted offence by Designated Court at Faridkot in case No.39 of 1.2.1990. The conviction and sentence was awarded to the petitioner on 18.2.1994. As on 2.5.2007, the petitioner has undergone 14 years

2 months 17 days of actual sentence and by counting the remissions and by excluding parole, he stated to have undergone 19 years 7 months 3 days of total sentence. It is averred that in terms of instructions/notification issued by the Government dated 8.7.1991, a convict who undergoes an actual sentence of 12/18 years by including remission etc., then he becomes entitled to pre-mature release. The case of the petitioner was considered by the Government for pre-mature release vide order dated 5.7.2007. A perusal of the order would show that record of the petitioner-convict shows that he had availed six months parole on the basis of fake farad of agriculture land on 13.9.2004. This is stated to be a serious offence as per Section 8.3 of Punjab Good Conduct Prisoners Rules, 1962. A appraisal of the said mis-conduct was made by the District and Sessions Judge, Patiala, on 19.10.2004. The following stipulation has been made in Para 1.1 (11):-

> "the case of premature release will only be considered provided convict has maintained good conduct in jail. For this purpose good conduct means that he has not committed any jail offence for a period of 5 years prior to the date of his eligibility for consideration for release as per para 1.1 above."

Accordingly, Director General of Police (Jails) has not recommended the pre-mature release of the petitioner. The petitioner has filed the present writ petition, impugning the said order and to seek direction to consider his case of pre-mature release.

Reply has been filed. The State has tried to justify the

impugned order by referring to Para 548(a) of Punjab Jail Manual under which the petitioner was awarded punishment of forfeiture of 12 days remission from his earned remissions. It is further stated that pre-mature release case of the petitioner is to be initiated provided the prisoner has maintained good conduct in jail and has not committed any jail offence for a period of five years before the date of eligibility for consideration for pre-mature release.

Learned counsel for the petitioner, however, would contend that this action of the State in not considering the case of the petitioner for pre-mature release is totally unjustified and would violate his legal and fundamental rights. The counsel contends that even if the petitioner has committed a jail offence, then he was tried for the same and punished with forfeiture of 12 days remission. Taking this punishment into consideration for not considering the case of the petitioner for his pre-mature release would amount to punishing the petitioner once over again and may attract the provisions of double jeopardy. The counsel would further refer to the contents of Para 516-B of the Punjab Jail Manual and the note appended thereunder to say that for the purpose of preparing the rolls of prisoners under the above rules, sentence awarded to a prisoner for an offence committed while in prison or during suspension of sentence will not be taken into account. In this regard, counsel has also referred to the case of ***Ravi Kumar alias Bitu Vs. State of Punjab,***, 2004 (2) R.C.R. (Criminal) 5.

There is not much dispute between the parties so far as the factual position is concerned. It is not disputed before me that the petitioner has been awarded the jail punishment. Counsel for the

petitioner would also not seriously dispute the provisions of the Punjab Jail Manual, which provide that pre-mature release of a convict is to be considered, provided the convict has maintained a good conduct in jail. The good conduct required to be maintained has also been defined and means that he has not committed any jail offence for a period of five years prior to the date of eligibility for consideration for release.

It can not be ignored that the petitioner has undergone over a 14 years of RI as an actual sentence whereas his sentence by including remissions work out to be more than 19 years. The provisions of Section 516-B of Punjab Jail Manual and the note appended thereto can also not be ignored. It says for the purpose of preparing the roll of prisoners under the above rules, the sentence awarded to a prisoner for an offence committed while in prison or during suspension of sentence is not to be taken into account. Purpose of this rule appears to be that sentence, which is awarded for a jail offence is not to be taken into account. It may otherwise sound reasonable to say that a person can not be made to suffer on account of some minor infirmity, which he happens to incur while undergoing sentence. There may be something in what learned counsel for the petitioner says when he urges that the effect of punishment of forfeiture of 12 days remission even if given effect to, can not lead to the consequences of non-consideration of the case of the petitioner for pre-mature release. In view of the period of actual sentence undergone by the petitioner and the fact that he has undergone sentence of more than 19 years by including the remissions, it would be fair to issue direction to the Government to

consider the case of the petitioner for pre-mature release by ignoring the conviction of the petitioner for a jail offence.

The impugned order is accordingly set-aside and a direction is issued to the Government to consider the case of the petitioner for pre-mature release. While doing so, the fact of his conviction for a jail offence would not taken into consideration. Let the needful be done within a period of three months.

The petition is allowed in the above terms.

December 14,2007 **(RANJIT SINGH)**
khurmi **JUDGE**